STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 120424-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _12th_ day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 5, 2011, XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on April 12, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is Blue Cross Blue Shield of Michigan's (BCBSM) *Community Blue Group Benefits Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

From January 5 to February 5, 2011, the Petitioner received occupational therapy (OT) services from XXXXX, O.T., at XXXXX Clinic in XXXXX. The charge for this treatment was $1,848. BCBSM denied coverage for this care.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference

on February 22, 2011, and issued a final adverse determination dated March 7, 2011, upholding its denial.

III. ISSUE

Is BCBSM required to pay for the Petitioner's occupational therapy provided by XXXXX, O.T.?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's mother indicates that she needed treatment for her son. She sought out and obtained testing for him at the XXXXX Clinic in May 2010. In October 2010, she decided to follow through with the recommended treatment. The Petitioner's mother reviewed the information regarding her health care coverage provided by her employer. She then called BCBSM to verify that her son's OT would be a covered benefit. She states she was told by BCBSM to get the diagnostic code and treatment code from the provider and call back. The Petitioner's mother provided the codes to BCBSM and indicates that BCBSM representatives told her that the care was a covered benefit. However, since the provider was an out-of-network provider, the benefit coverage level would be different. She states she had the BCBSM representative review what her financial responsibility would be and based on her understanding she believed that this care would be a covered benefit and moved forward with the care for her son.

After the Petitioner's OT bills were submitted to BCBSM they were denied. The Petitioner's mother states BCBSM has given a number of different reasons why they believe the Petitioner's OT is not a covered benefit. She maintains that BCBSM assured her that this care would be covered. BCBSM has indicated that Petitioner's mother was informed that OT by this provider is not a covered benefit. However, the Petitioner's mother states BCBSM led her to believe that her son's care would be covered.

BCBSM's Argument

BCBSM states the Petitioner's certificate provides a benefit for occupational therapy. However, Section 3 of the certificate states:

> Physical, occupational and speech therapies are not payable when provided in a nonparticipating freestanding outpatient physical therapy facility, or any other facility independent of a hospital or any independent sports medicine clinic.

Section 4 of the certificate provides:

> We pay physician services for physical therapy, speech and language pathology services, and occupational therapy when provided for rehabilitation.

Section 4 also indicates that occupational therapy must be prescribed by a doctor of medicine, osteopathy or podiatry, or a dentist.

It is BCBSM's position that the denial of reimbursement for occupational therapy services is correct and in accordance with the terms of the Petitioner's health care coverage.

BCBSM does not dispute that occupational therapy has helped Petitioner. However, occupational therapy must be prescribed by a doctor of medicine, osteopathy or podiatry, or a dentist pursuant to the terms of the certificate. Services billed directly by an independent occupational therapist are not a covered benefit. Ms. XXXXX is an independent occupational therapist who works in an independent office setting and therefore her services are not a covered benefit.

The Petitioner's mother argues that BCBSM confirmed her son's occupational therapy would be a covered benefit in a phone call held on October 20, 2010. BCBSM records indicate that the Petitioner's mother was informed that independent occupational therapy services are not covered under the provisions of the certificate. Even though she followed up the next day with a call that provided the procedure codes, which are covered benefits, the Petitioner's mother had already been informed that services provided by independent occupational therapists were not covered.

Commissioner's Review

Under the terms of the certificate, outpatient occupational therapy that is provided and billed by an independent occupational therapist is not a covered benefit. For this care to be covered it must be provided by a physician or in an outpatient physical therapy facility that participates with BCBSM.

In this case, the occupational therapy was provided and billed by XXXXX, an independent occupational therapist. The treatment was not provided by a physician and was not billed through a participating outpatient physical therapy facility. Therefore, the occupational therapy provided to the Petitioner is not a covered benefit under the provisions of the certificate.

Finally, the Petitioner's mother believes that she was misled to believe by BCBSM that the Petitioner's occupational therapy was a covered benefit. BCBSM argues that it did not mislead the Petitioner or his mother. Under the Patient's Right to Independent Review Act, the

Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms of the applicable insurance contract and state law. Resolution of a factual dispute such as conflicting accounts of a telephone conversation cannot be part of a PRIRA decision because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

The Commissioner finds that BCBSM correctly applied the provisions of the Petitioner's certificate.

V. ORDER

BCBSM's final adverse determination of March 7, 2011, is upheld. BCBSM is not required to pay for the Petitioner's occupational therapy provided by XXXXX, O.T.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner